



DIVISION OF
MARKET REGULATION

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

December 30, 1999

Mr. Raymond J. Hennessy
Vice President
Member Firm Regulation
New York Stock Exchange, Inc.
20 Broad Street
New York, NY 10005

RE: Net Capital Treatment for Foreign Issued, Foreign Settled Fail Items

Dear Mr. Hennessy:

This is in response to your December 29, 1999 letter requesting a permanent extension of the Division's no action position regarding the net capital treatment for foreign issued, foreign settled fails to deliver, fails to receive items pursuant to paragraphs (c)(2)(ix) and (c)(2)(iv)(E) of Rule 15c3-1 under the Securities Exchange Act of 1934.¹

In a letter dated June 5, 1989 ("Foreign Fails Letter")² the Division extended no action relief under Section 15 of the Securities Exchange Act³ and Rule 15c3-1 thereunder with relation to the manner in which broker-dealers must account for foreign fails to deliver and fails to receive when calculating net capital. The Foreign Fails Letter was later modified by the Division's February 5, 1990 letter to Jeffrey C. Bernstein ("Foreign Fails Modification Letter")⁴ to specify that the timing of capital charges on foreign fails to deliver should be calculated using "business" days, not "calendar" days. The no action relief granted in these letters has been extended through December 31, 1999.

¹ 17 CFR 240.15c3-1.

² Letter from Michael A. Machiaroli, Associate Director, Division of Market Regulation, SEC to Paul J. Isaac of the Securities Industry Association Capital Committee and Maxine Chou of the Securities Industry Association International Operations Association Compliance Committee (June 5, 1989).

³ 15 U.S.C. 78o(c)(3).

⁴ Letter from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, SEC to Jeffrey C. Bernstein of the Securities Industry Association's IOA Compliance Committee (Feb. 5, 1990).

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The Division believes that the relief granted in the Foreign Fails Letter and the Foreign Fails Modification Letter should be extended permanently. Accordingly, the Division will not recommend enforcement action to the Commission if a broker-dealer, for purposes of computing its net capital, treats failed to deliver failed to receive contracts involving foreign issued and settled securities in accordance with the terms set forth those letters.

This is a staff position with respect to enforcement only and does not represent a legal conclusion regarding the application of the federal securities laws. This position is based solely on the representations which have been made to the Division. Any different facts might require a different response. Furthermore, this position may be withdrawn or modified at any time if the Division determines that such action is necessary in the public interest, for the protection of investors, or otherwise, in furtherance of the purposes of the federal securities laws.

Sincerely,



Michael A. Macchiaroli
Associate Director

cc: Susan Demando, NASD Regulation